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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179379
Party	Defendant NakedJay Spirits Co., LLC
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I hereby certify that this Answer to Notice of Opposition is being transmitted by the Electronic System for Trademark Trials and Appeals to the United States Patent and Trademark Office on October 17, 2007.

Typed or printed name of person signing paper

ANSWER: Applicant admits that on July 13, 2006 it filed an application for the mark as set forth in Application Serial No. 78/928660 in connection with vodka, in International Class 33, based upon Applicant's intention to use the mark in commerce: Answering further, the mark consists of a depiction of a bird with the words NAKEDJAY and VODKA. The bird's head, body, tail and legs are black. The bird's crest is blue. The word NAKED is black with black

lining to the right and below each of the letters. The word JAY is blue with blue lining to the right and below each of the letters. The word VODKA is black. The white and gray in the drawing represents background, outlining, shading, and/or transparent areas and is not part of the mark. To the extent that the defined term “NAKEDJAY VODKA mark” is other than the mark as set forth in the Application, Applicant denies the allegations in paragraph 1 of the Notice of Opposition.

2. As published, according to the application, the NAKEDJAY VODKA mark consists of a depiction of a bird with the words NAKEDJAY and VODKA. The bird’s head, body, tail and legs are black. The bird’s crest is blue. The word NAKED is black with black lining to the right and below each of the letters. The word JAY is blue with blue lining to the right and below each of the letters. The word VODKA is black. The white and gray in the drawing represents background, outlining, shading, and/or transparent areas and is not part of the mark.

ANSWER: Admitted; provided, however, that to the extent that the defined term “NAKEDJAY VODKA mark” is other than the mark as set forth in the Application, Applicant denies the allegations in paragraph 2 of the Notice of Opposition.

3. On May 25, 2007, Naked Tequila was granted a 90-day extension of the time to oppose the Application for good cause until September 12, 2007.

ANSWER: Applicant admits that on May 25, 2007 Opposer was granted a 90-day extension of time to oppose the Application until September 12, 2007. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3 of the Notice of Opposition, namely, whether such extension was granted for good cause, and therefore denies the same.

4. On information and belief, NakedJay has never used the NAKEDJAY VODKA mark in connection with any goods or services.

ANSWER: Applicant admits that it has not yet used the NAKEDJAY VODKA mark in connection with any goods or services.

5. On information and belief, NakedJay has never used the NAKEDJAY VODKA mark in commerce in connection with the goods described in the Application.

ANSWER: Applicant admits that it has not yet used the NAKEDJAY VODKA mark in connection with the goods described in the Application

6. Naked Tequila is the owner of an intent-to-use application, App. Ser. No. 78/481,448 for the mark NAKED, which was filed on September 10, 2004 and allowed on November 15, 2005, for distilled spirits in International Class 33. Naked Tequila is also the owner of an intent-to-use application, App. Ser. No. 78/134,321 for the mark NAKED TEQUILA, which was filed on June 10, 2002 and allowed on August 2, 2005, for tequila made from Agave in International Class 33. Collectively, the marks claimed in these applications shall be referred to as "the NAKED Marks."

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Notice of Opposition and therefore denies the same.

7. Naked Tequila has a bona fide intention to use the NAKED Marks with the goods listed in the respective applications in the future.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Both of Naked Tequila's applications for the NAKED Marks were filed before the Application was filed.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Notice of Opposition and therefore denies the same.

9. NakedJay's NAKEDJAY VODKA mark is confusingly similar to Naked Tequila's NAKED mark and Naked Tequila's NAKED TEQUILA mark. Vodka is the generic name for a type of distilled spirit. The dominant and distinctive feature of NakedJay's NAKEDJAY VODKA mark is thus the term NAKED, which feature is fully encompassed by both Naked Tequila's NAKED mark and Naked Tequila's NAKED TEQUILA mark. In addition, NakedJay's NAKEDJAY VODKA mark creates a similar overall commercial

impression as that created by Naked Tequila's NAKED mark and Naked Tequila's NAKED TEQUILA mark.

ANSWER: Applicant admits that vodka is the generic name for a type of distilled spirit. Applicant denies the remaining allegations of paragraph 9 of the Notice of Opposition.

10. The description of goods contained in the Application (vodka) and the goods that Naked Tequila intends to sell in connection with the NAKED Marks (distilled spirits) are identical goods, which directly overlap, and are sold through the same marketing channels to the same purchasers.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Notice of Opposition and therefore denies the same.

11. NakedJay's use and registration of the later filed and confusingly similar NAKEDJAY VODKA mark will cause purchasers, prospective purchasers, users, and others to be confused, mistaken, or deceived into the belief, contrary to fact, that NakedJay's goods emanate from or are sponsored or approved by Naked Tequila or are related to Naked Tequila's goods, thus damaging Naked Tequila.

ANSWER: Applicant denies the allegations in paragraph 11 of the Notice of Opposition.

AFFIRMATIVE DEFENSE

Applicant hereby asserts the following affirmative defense:

1. The Notice of Opposition fails to state a claim upon which relief can be granted.

WHEREFORE, JAYBIRD SPIRITS CO., LLC f/k/a NAKEDJAY SPIRITS CO., LLC requests that the Notice of Opposition be dismissed.

Dated: October 17, 2007

JAYBIRD SPIRITS CO., LLC f/k/a
NAKEDJAY SPIRITS CO., LLC

By: 

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 17, 2007 the foregoing Answer to Notice of Opposition, was served upon Opposer's attorney by depositing a copy of said document in the U.S. mail in an envelope addressed to:

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Jeffrey H. Brown